No. 17-1542
(Judge Thomas C. Wheeler)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

DEFENDANT'S REPLY IN SUPPORT OF ITS CROSS-MOTION TO DISMISS

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DEFENDANT'S REPLY IN SUPPORT OF ITS CROSS-MOTION TO DISMISS

Pursuant to Rules 12(b)(6) and 56 of the Rules of the United States Court of Federal Claims (RCFC) and the Court's July 16, 2018 Order, defendant, the United States, respectfully submits this reply in support of its cross-motion to dismiss the complaint filed by plaintiff Local Initiative Health Authority for Los Angeles County (L.A. Care). Because L.A. Care's complaint fails to state a claim upon which relief can be granted, the complaint should be dismissed.

INTRODUCTION

L.A. Care's response to our motion to dismiss rests on the mistaken premise that whether or not Congress decides to appropriate funds for a statutory program that includes a payment directive, the Government must pay. In other words, in L.A. Care's view, congressional appropriations decisions are irrelevant to how the Government's funds are expended. Not only does such a notion defy the Constitution—in particular the Appropriations Clause (U.S. Const. art. I, § 9, cl. 7.)—it defies common sense.

L.A. Care argues that it is entitled to recover, in damages, the precise amount of cost-sharing reduction (CSR) payments that Congress declined to appropriate. But L.A. Care also admits that congressional intent controls whether it is entitled to CSR payments. Congress

signaled its intent in the Affordable Care Act (ACA) by appropriating permanent funding for Section 1401 (premium tax credits) while leaving its companion provision, Section 1402 (cost-sharing reductions) to the annual appropriations process. Congress chose not to fund CSRs when it enacted the ACA in 2010 and, every year for nearly a decade, it has chosen not to fund CSRs payments. Nor did Congress authorize a damages remedy in the ACA that would permit issuers to recover in this Court the precise CSR payments for which Congress declined to appropriate funds. Because L.A. Care's claim would circumvent Congress's intent not to fund CSR payments, the Court should grant the Government's cross-motion to dismiss.

ARGUMENT

I. Congressional Intent Controls Whether Plaintiff Is Entitled To CSR Payments

In an attempt to evade the effects of both the Appropriations Clause and the Anti-Deficiency Act, L.A. Care's brief describes a statute that it wishes Congress had enacted, rather than the statute that Congress actually did enact. In the statute that plaintiff wishes had been enacted, Congress would have appropriated funds for the payment of CSRs under Section 1402, and permitted qualified health plan (QHP) issuers to recover unpaid CSR payments via litigation in this Court. In *that* statute, Congress would have chosen, in 2010, to fund payments that would not possibly become due until 2014, instead of leaving that decision to a future Congress to determine in annual appropriations legislation. But Congress was not obliged to decide every issue at the time it created the congressional direction in 2010 to make CSR payments, 42 U.S.C. § 18071(c)(2)(3)(A), and a prior Congress that did not permanently appropriate funds for such a directive cannot bind a later Congress. And here, later Congresses chose not to fund CSR payments.

The fatal problem with L.A. Care's response to our motion to dismiss is that it begins with the faulty premise that there exists a mandatory obligation for the Federal government to make CSR payments. L.A. Care then attempts to argue that the issues we raised in our motion do not "negate" that payment obligation. The problem with L.A. Care's approach is that it presumes the threshold question that a mandatory payment obligation exists. As shown in our opening brief and below, the decisions Congress made when it enacted the ACA demonstrated its intent *not* to create such a mandatory payment obligation in the absence of appropriations. Because L.A. Care has not affirmatively demonstrated Congressional intent to create that obligation, L.A. Care's complaint must be dismissed.

A. L.A. Care's "Plain Language" Argument Ignores Congress's Decision To Structure The ACA By Funding Premium Tax Credits While Leaving The Choice To Fund CSR Payments To Future Congresses

L.A. Care does not dispute that congressional intent controls whether it may recover CSR payments through litigation in this Court. Nor is there any dispute that Congress has never chosen to appropriate *any* funds for CSR payments. As we explained in our opening brief, the district court in *United States House of Representatives v. Burwell* concluded that the permanent appropriation that funds section 1401 premium tax credits (31 U.S.C. § 1342) did not encompass CSR payments. 185 F. Supp. 3d 165, 189 (D.D.C. 2016). After reviewing the matter, the current administration determined that there was no appropriation. L.A. Care makes no contrary argument in its brief, and it conspicuously declines to defend the prior administration's conclusion that CSR payments were proper. Nor does plaintiff argue that there is any other funding source available to HHS from which to make CSR payments. In short, plaintiff concedes that, although Congress permanently funded the premium tax credits in Section 1401, it has not provided any funding to HHS for Section 1402 CSR payments.

Although congressional intent is dispositive here, L.A. Care fails to demonstrate that Congress intended to make CSR payments in the absence of an appropriation, and it is L.A. Care's burden to demonstrate that intent, not the Government's burden to prove the absence of such an intent. Instead, L.A. Care claims that the "plain language" of Section 1402 is clear, and that such language ends this Court's inquiry into Congress's intent. Pl. Resp. at 4-8. L.A. Care also relies upon "the Government's conduct over the course of several years" to show that Section 1402 mandates payment. *Id*. at 12. The statute's "plain language" does *not* end the inquiry though, because if it did, then the Federal Circuit would have decided *Moda* differently. Indeed, focusing solely on the Section 1402 snippet "shall pay" ignores Congress' intent in structuring the ACA the way it did. Moreover, the governmental conduct upon which plaintiff relies occurred before the Government concluded that no valid appropriation existed for such payments.

Although L.A. Care relies on *Moda* to argue that the plain language of Section 1402 ends this Court's inquiry, the Federal Circuit in *Moda* did not enter judgment against the United States, and no Federal Circuit case in similar circumstances has done so. The authority upon which *Moda*—and in turn L.A. Care—relies regarding the absence of an appropriation, *U.S. v. Langston*, 118 U.S. 389, 394 (1886), did not hold that a command to pay, standing alone, creates an obligation that the United States had to pay. Payment in *Langston* could not occur absent Congress's explicit exercise of its power under the Appropriations Clause. *See* Act of August 4, 1886, 24 Stat. 256, 281-82 (1886) (authorizing payment to Langston following Supreme Court's decision). Indeed, the Supreme Court has never disregarded Congress's constitutional power pursuant to the Appropriations Clause or ignored its intent with regard to funding decisions.

L.A. Care also claims that our arguments regarding the ACA's structure fail because "the difference in appropriation methodology in Sections 1401 and 1402 means nothing more than that Congress intended to fund the obligations differently, not that it did not intend to create an obligation in the first place." Pl. Resp. 9-10. According to L.A. Care, because section 1401 created a tax credit, the fact that Congress funded that provision with the same appropriation typically used to fund tax credits in general is "unremarkable and says nothing about the enforceability of Section 1402's mandatory payment obligation. . . ." *Id.* at 11. But that response begs the question of whether an obligation exists in the first place. L.A. Care repeats that fallacy later when it claims that the Government failed to cite any case law for the "extraordinary proposition that an appropriation included in one portion of a statute negates a mandatory payment obligation in another section." *Id.* Irrespective of whether it may have been "unremarkable" for Congress to fund a tax credit with an appropriation that had typically been used to fund other tax credits, the crucial point is that Congress *chose* to fund the tax credit provision and chose *not* to fund the CSR provision. That choice illuminates Congress's intent whether to create an obligation that the United States must pay. Congress has plenary power over the purse and chose not to fund CSR payments in the ACA or thereafter. That funding decision forecloses plaintiff's demand for money for CSRs.

B. Contrary To L.A. Care's Assertions, The Lack Of Appropriations For CSR Payments Is Not Only Relevant, It Is Dispositive

L.A. Care's argument starts with the premise that the plain text of Section 1402 requires "the Government" to make CSR payments. Pl. Resp. at 2-4. In reality, Section 1402 is framed as a directive to an agency—HHS—to make CSR payments. And under bedrock principles of appropriations law, that directive could not properly be implemented unless and until Congress provided the necessary funding to HHS. *See* 31 U.S.C. § 1341(a)(1)(A) ("An officer or

employee of the United States Government or of the District of Columbia government may not . . . make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."). It is undisputed that the plain language of Section 1402 does not contain an appropriation for CSRs.

But according to L.A. Care, the issue of appropriations has "no bearing" on whether an enforceable statutory payment obligation exists. Pl. Resp. at 10. Plaintiff relies on both *Langston* and the Federal Circuit's decision in *Slattery v. United States*, 635 F.3d 1298 (Fed. Cir. 2001) (*en banc*). L.A. Care's suggestion that *Slattery* stands for the proposition that Congress's failure to appropriate funds has "no bearing" on whether an obligation exists and whether a plaintiff may sue to collect on that obligation is flatly wrong. *Slattery* does not hold that appropriations are irrelevant, but instead explicitly defines its holding as only that the "jurisdictional foundation of the Tucker Act is not limited by the appropriations status of the agency's funds or the source of those funds by which any judgment may be paid." *Slattery*, 635 F.3d at 1321. Thus, *Slattery* stands for the proposition that the means by which an agency is funded (*i.e.*, through appropriations or self-funding) is not determinative of whether that agency may be sued in this Court.[1] There is no dispute that HHS and CMS are agencies that are generally funded through congressional appropriations. The issue before the Court is whether Congress exercised its constitutional appropriations power to fund this particular program. Because it did not do so, L.A. Care cannot recover here.

Nor does *Langston* confront the issue that is the basis for our argument here: the absence of an appropriation, in the context of this statute, is telling and dispositive of Congress's intent. Indeed, prior to and since *Langston*, the Supreme Court has consistently recognized the

[1] *Slattery* specifically involved breach of contract claims. 635 F.3d at 1300.

importance of Congress's funding choices and given effect to appropriations limitations in determining that there was no substantive grounds for liability on the part of the Government. In *United States v. Mitchell*, 109 U.S. 146, 150 (1883), for example, the Supreme Court concluded that, by appropriating salaries at the rate of $300 per year for five consecutive years instead of the $400 provided in permanent legislation, Congress "reveal[ed] a change in the policy" with the "purpose" "to suspend the law fixing the salaries . . . at $400 per annum." The Court in *Dickerson v. United States*, 310 U.S. 554, 561-62 (1940), held that Congress's repeated restriction on the use of appropriated funds to pay reenlistment bonuses, notwithstanding permanent legislation providing for such bonuses, evinced an intent to suspend payment of them. And, in *United States v. Will*, 449 U.S. 200, 228 (1980), which involved four differently-phrased appropriations restrictions in four different fiscal years, the Supreme Court had no trouble concluding that each restriction expressed the same congressional intent not to raise judicial pay.

The Federal Circuit has consistently drawn a connection between Congress's appropriations choices and substantive liability—contrary to L.A. Care's contention that appropriations have "no bearing" on the Government's obligation to pay. In *Moda* the Federal Circuit gave effect to Congress's decision to restrict the appropriations from which risk corridors payments could be made and held that the Government was not substantively liable for risk corridors payments beyond those amounts paid into the program by issuers. *See* 892 F.3d at 1323, 1327. The Court observed, "what else could Congress have intended? It clearly did not intend to consign risk corridors payments 'to the fiscal limbo of an account due but not payable.'" *Id*. at 1325 (quoting *United States v. Will*, 449 U.S. 200, 224 (1980)); *see also Prairie Cty., Mont. v. United States*, 782 F.3d 685 (Fed. Cir. 2015) (limiting liability under "shall pay" statute to amounts appropriated by Congress); *Greenlee County, Ariz. v. United States*, 487 F.3d

871, 877-80 (Fed. Cir. 2007) (same); *Star-Glo Associates, L.P., v. United States*, 414 F.3d 1349, 1355 (Fed. Cir. 2005) (concluding that Congress intended to restrict payments due under "shall pay" statute to amounts provided in lump sum appropriation); *Highland Falls-Fort Montgomery School Dist. v. United States*, 48 F.3d 1166, 1171-72 (Fed. Cir. 1995) (holding that Congressional earmarks limited Government's liability to amounts appropriated under a "shall pay" statute).

L.A. Care further argues that the fact that Congress neither appropriated funds for CSR payments, nor provided the slightest indication that it was authorizing a damages remedy in this Court for its own failure to appropriate, has no bearing on whether L.A. Care has a valid cause of action in this Court. *See* Pl. Resp. at 15-16. To accept plaintiff's argument is to disregard the Constitution. The Appropriations Clause of the Constitution provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, Cl. 7. That provision independently bars a court from ordering the payment of money from the Treasury absent congressional authorization. *See OPM* v. *Richmond*, 496 U.S. 414, 425 (1990); *Reeside* v. *Walker*, 52 U.S. (11 How.) 272, 291 (1851) ("However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion. Hence, the petitioner should have presented [its] claim on the United States to Congress, and prayed for an appropriation to pay it.").

In *OPM v. Richmond*, the Supreme Court explained that by reserving to Congress the authority to approve or prohibit the payment of money from the Treasury, the Appropriations Clause serves the "fundamental and comprehensive purpose" of assuring "that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common

good and not according to the individual favor of Government agents or the individual pleas of litigants." 496 U.S. at 427-28. And the Court further explained that "[i]t follows that Congress has appropriated no money for the payment of the benefits respondent seeks, and the Constitution prohibits that any money 'be drawn from the Treasury' to pay them." *Id*. at 424.

The Supreme Court reaffirmed the significance of the Appropriation Clause limitation in *Salazar v. Ramah Navajo,* 567 U.S. 182, 198 n. 9 (2012). There, the Court explained:

> In *Richmond,* we held that the Appropriations Clause does not permit plaintiffs to recover money for Government-caused injuries for which Congress "appropriated no money.". . . . *Richmond*, however, indicated that the Appropriations Clause is no bar to recovery in a case like this one, in which "the express terms of a specific statute" establish "a substantive right to compensation" from the Judgment Fund.

Id. (quoting *Richmond*, 496 U.S. at 424, 432). The statute at issue in *Ramah Navajo*—unlike the one here—provided expressly that claimants denied payment could bring claims for money damages under the Contract Disputes Act, thereby explicitly identifying the Judgment Fund as source of payment.

No term of the Affordable Care Act expressly provides a "substantive right to compensation" from the Judgment Fund, and Congress made no appropriation for CSR payments. In these circumstances, "[t]he established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress." *United States v. MacCollom,* 426 U.S. 317, 321 (1976). Accordingly, the Court should reject L.A. Care's argument that Congress' decision to not appropriate funds for CSR payments has no bearing on whether an obligation exists and whether a plaintiff may sue to collect on that obligation.

C. Given The ACA's Structure, No Subsequent Repeal Or Modification Of The Statute Is Necessary To Demonstrate Congressional Intent

L.A. Care also labors under the misimpression that Congress only signals its intent through a *subsequent* repeal or modification of an existing, substantive law. Pl. Resp. 7-9 (citing *Moda*, 892 F.3d at 1322-23, and *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018)). As we demonstrated in our opening brief, no subsequent repeal or modification is necessary given that the ACA's structure already reflects Congress's intent. The relevant ACA subpart—Title 1, subtitle E, part I, subpart A (Premium Tax Credits and Cost-Sharing Reductions)—contains two sections: 1401 and 1402. Section 1401 amended the tax code to provide a permanent appropriation to fund premium tax credits. *See* 26 U.S.C. § 36B. In contrast, Congress provided no permanent appropriation to fund Section 1402, leaving CSR funding to the annual appropriations process.

This structural difference is dispositive because "[when Congress includes particular language in one section of a statute but omits it in another[,] . . . th[e] Court presumes that Congress intended a difference in meaning." *Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 777 (2018). L.A. Care attempts to distinguish *Digital Realty* by arguing that the Supreme Court "relied heavily on the meaning of the plain language" of the statute. Irrespective of whether that assertion is true, it does nothing to undermine the *principle* underlying the Court's analysis – that courts are not at liberty to dispense with the differences in the statutory provisions.

Moreover, L.A. Care's reliance on *Moda* to suggest that Congress could only have indicated its intent not to fund CSR payments through "subsequent appropriation riders" is misplaced. Pl. Resp. at 6-7 (citing *Moda*, 892 F.3d at 1322-29). Whether Congress reflects its intent through restrictions in subsequent appropriations, as in *Moda*, or through the structure of the statute itself, as in this case, that congressional intent is still controlling. Of course, courts

routinely look to the substantive statute at issue—not just subsequent enactments—to determine congressional intent. *See, e.g.*, *Consol. Edison Co. of N.Y. v. O'Leary*, 117 F.3d 538, 543-44 (Fed. Cir. 1997) (examining substantive statute to determine whether congress intended to provide a private remedy); *see also Chamberlain Grp., Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1192 (Fed. Cir. 2004) (same).

In this case, the ACA itself reflects Congress's intent to permanently fund Section 1401 while leaving Section 1402 funding to future Congresses. And because Congress elected not to appropriate funds for CSR payments either in the ACA itself or in subsequent appropriations legislation, L.A. Care cannot establish as a matter of law its entitlement to CSR payments in the absence of such appropriations.

D. The ACA's Structure Permits Issuers To Account For The Absence Of CSR Payments Through Premium Increases, And Plaintiff's Arguments To The Contrary Are Unavailing

In our motion we also explained how the ACA's structure permits issuers to raise premiums to account for the lack of CSR appropriations, and thus it is implausible to conclude that Congress intended issuers to recover through litigation the amounts Congress deliberately chose not to appropriate, while also potentially recouping CSR costs through higher premiums and advanced payment of premium tax credits. Gov't Mot. at 9-10, 17-21. Given issuers' ability to offset CSR expenses by raising premiums, it is implausible to conclude that Congress also intended to grant issuers a damages remedy.

L.A. Care never even disputes the fact that the increases in premiums in 2018 have offset the absence of CSR payments. Instead, L.A. Care's continued argument for damages rests on the untenable premise that Congress intended for issuers to collect full CSR payments via damages, while also potentially recouping CSR costs through higher premiums and advanced payment of

tax credits. It defies common sense to conclude Congress intended to provide a potential double payment of amounts that it never appropriated for in the first place.

In response, L.A. Care argues that the Government has misconstrued the statutory framework because state regulators *permit* issuers to increase their premiums, and that decision is not left to the issuers directly. Pl. Resp. 13. But L.A. Care does not dispute that, if its theory were correct, issuers would be legally entitled to a double recovery for CSR payments for every year that Congress failed to appropriate funds for Section 1402, through the increased premiums they are able to charge[2] and by also seeking damages in this Court. Yet, there is likewise no indication that Congress ever conceived that its decision not to fund CSRs would result in dollar for dollar funding of CSRs through litigation in this Court. The "touchstone here, of course, is whether Congress intended a cause of action that it did not expressly provide." *Bowen v. Mass.*, 487 U.S. 879, 905 n.42 (1988). There is simply no basis to conclude that Congress intended to provide a damages cause of action for issuers whose inability to receive CSR payments flows from Congress's own decision not to fund such payments.

II. L.A. Care's Implied-In-Fact Contract Claim Fails Because The ACA Reflects No Intent To Bind The United States And L.A. Care In Contract

A. *Moda* Properly Applied Supreme Court Precedent In Rejecting Plaintiffs' Implied Contract Claims

In our motion to dismiss, we demonstrated that congressional intent controls whether a statute vests a private party with contract rights against the United States. *See* Gov't Mot. at 22-28. There is a "well-established presumption" that the Government does not intend to form a contract through legislation or regulation. *Moda*, 892 F.3d at 1330. Absent statutory or regulatory language identifying both (1) a contract and (2) "the contours of any contractual

[2] https://coveredcanews.blogspot.com/2017/10/covered-california-keeps-premiums.html

obligation," courts routinely reject allegations that a statutory and regulatory scheme comprises an implied contract between the United States and a private party. *Brooks v. Dunlop, Mfg.*, 702 F.3d 624, 630 (Fed. Cir. 2012).

Recognizing that *Moda* forecloses its implied contract claim, L.A. Care argues that the Court may disregard *Moda* because the Federal Circuit allegedly failed to properly apply Supreme Court precedent. According to L.A. Care, its implied contract claims are based on the ACA, regulations, and the conduct of the Government, while our motion to dismiss "focuses almost entirely on the language of the statute." Pl. Resp. at 16, 17. The problem for L.A. Care is that *Moda* does not simply focus on the statutory language. As we showed in our motion, the Federal Circuit based its decision on the "statute, its regulations, **and HHS's conduct**" in merely working towards crafting an incentive program. *Moda*, 892 F.3d at 1330 (emphasis added). Besides, the only conduct to which L.A. Care points is that the Government made CSR payments in accordance with Section 1402, before concluding that no valid appropriation existed for such payments. Plaintiff's argument that the Government entered into an implied-in-fact contract by making Section 1402 payments, because such payments are contractual in nature, simply begs the question.

L.A. Care also suggests that there are factual distinctions between the risk corridors program and the CSR program that would somehow make the holding in *Moda* that the ACA did not create an implied-in-fact contract between the Government and QHP issuers inapplicable here. *See* Pl. Resp. at 17-18. Yet, L.A. Care never describes any meaningful distinctions between the programs as it relates to the existence of a contract. In both the risk corridors cases and this case, plaintiffs have argued that—despite the lack of any language in the ACA indicating an intent to create a contractual relationship and the long-standing presumption against

the formation of contracts through statutes and regulations—Congress nonetheless impliedly intended for the Government to enter into contracts with QHP issuers by inducing them into participating on the ACA exchanges. In *Moda*, the Federal Circuit rejected this argument, and L.A. Care has failed to explain why this Court should decline to follow that binding precedent here.

B. HHS Did Not Have Authority To Enter Into Contract

We demonstrated in our opening brief why HHS had no authority to enter into the implied contract that L.A. Care alleges exists. In response, L.A. Care argues that "Section 1402's explicit instruction that the Secretary 'shall establish' the program and 'shall make' CSR payments," along with "the Secretary's obligation to administer and implement the ACA" provide implied actual authority to contract. Pl. Resp. at 20. But L.A. Care confuses the statutory authorization *to pay* with the authority *to contract*. L.A. Care's attempts to find authority to contract based upon generalized pronouncements in Section 1402 authorizing the Secretary to establish a CSR program must fail.

In addition, although L.A. Care claims that the Anti-Deficiency Act does not preclude its implied contract claims because CSR payments are "authorized by law" (Pl. Resp. 20-21), that argument ignores the point that there must still be budgetary authority—*i.e.*, an existing appropriation—for those CSR payments. And even L.A. Care must admit that Congress has never appropriated any funds whatsoever for those CSR payments. So, irrespective of whether L.A. Care is correct that CSR payments are "authorized by law," the lack of budgetary authority for such payments precludes HHS from entering into a contract on behalf of the United States to make such payments. *Cessna Aircraft Co. v. Dalton*, 126 F.3d 1442, 1449 (Fed. Cir. 1997) (quoting *Hercules, Inc. v. United States*, 516 U.S. 417, 426 (1996)); 31 U.S.C. § 1341(a)(1)(B).

These principles preclude L.A. Care's implied contract claim. Sections 1402 and 1412 of the ACA do not vest any Federal official with contracting authority. Thus, no valid contract for the payment of CSRs could have been formed. Accordingly, L.A. Care's claim for breach of an implied contract must be dismissed.

III. L.A. Care's Takings Claim Fails Because It Had No Contractual Rights To CSR Payments

L.A. Care appears to concede that it has no statutory or regulatory rights that could have been taken in violation of the Fifth Amendment. Instead, L.A. Care rests its takings claim on its alleged contractual right to CSR payments. According to L.A. Care, that contractual right was purportedly taken when the Government concluded that no valid appropriations could be used to make CSR payments, and ceased making those payments as a result. But because, as shown above and in our opening brief, L.A. Care has failed to show that there was any valid contract between it and the United States with regard to CSR payments, it had no property (*i.e.* contractual right) that could be taken. *Am. Pelagic Fishing Co. v. United States*, 379 F.3d 1363, 1372 (Fed. Cir. 2004). *See also Land of Lincoln Mut. Health Ins. Co. v. United States*, 892 F.3d 1184, 1186 (Fed. Cir. 2018) ("Because Land of Lincoln cannot state a contract claim, its takings claim fails to the extent it relies on the existence of a contract.").

Because L.A. Care does not have a legally cognizable property interest in CSR payments, "the court's task is at an end." *Am. Pelagic Fishing Co.*, 379 F.3ds at 372.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court deny L.A. Care's motion for partial summary judgment and dismiss all CSR-related claims in L.A. Care's amended complaint.

Respectfully submitted,

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November 27, 2018

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 27th day of November, 2018, a copy of the foregoing "DEFENDANT'S REPLY IN SUPPORT OF ITS CROSS-MOTION TO DISMISS" was filed electronically. Service upon plaintiff's counsel was thus effected by operation of the Court's CM/ECF system.

s/Albert S. Iarossi
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